

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

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CHRISTOPHER MCCULLOUGH, #174 909 \*  
Plaintiff, \*  
v. \* CIVIL ACTION NO. 3:05-CV-1163-F  
CHAMBERS COUNTY SHERIFF'S \* (WO)  
DEPARTMENT, *et al.*, \*  
\*  
Defendants.

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**RECOMMENDATION OF THE MAGISTRATE JUDGE**

Plaintiff, an inmate incarcerated at the William E. Donaldson Correctional Facility located in Bessemer, Alabama, filed this 42 U.S.C. § 1983 action on December 8, 2005. He complains that while he was incarcerated at the Chambers County Detention Facility Defendants subjected him to excessive force. Plaintiff names as Defendants the Chambers County Sheriff's Department, Sergeant John Carmichael, and Major Clay Stewart. Upon review of the complaint, the court concludes that dismissal of Plaintiff's claims against the Chambers County Sheriff's Department prior to service of process is appropriate under 28 U.S.C. § 1915(e)(2)(B)(i).

**DISCUSSION**

The Chambers County Sheriff's Department is not a legal entity and, therefore, is not subject to suit or liability under § 1983. *Dean v. Barber*, 951 F.2d 1210, 1214 (11<sup>th</sup> Cir.

1992). In light of the foregoing, the court concludes that Plaintiff's claims against this defendant are due to be dismissed. *Id.*

## CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that Plaintiff's claims against the Chambers County Sheriff's Department be DISMISSED with prejudice prior to service of process pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B)(i), and that this party be dismissed as a defendant to this complaint. It is further the Recommendation of the Magistrate Judge that this case with respect to the remaining defendants be referred back to the undersigned for additional proceedings.

It is further

ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before January 19, 2006. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982). *See Stein*

*v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

DONE, this 6<sup>th</sup> day of January, 2006.

/s/ Susan Russ Walker

SUSAN RUSS WALKER

UNITED STATES MAGISTRATE JUDGE